

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2014-056**

**BRANDY RANDALL**

**APPELLANT**

**VS. FINAL ORDER  
SUSTAINING HEARING OFFICER'S  
FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND RECOMMENDED ORDER**

**JUSTICE AND PUBLIC SAFETY CABINET  
DEPARTMENT OF CORRECTIONS  
J. MICHAEL BROWN, APPOINTING AUTHORITY**

**APPELLEE**

**\*\* \*\* \***

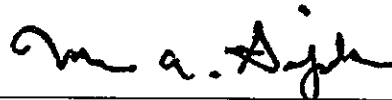
The Board at its regular December 2014 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated November 20, 2014, and being duly advised,

**IT IS HEREBY ORDERED** that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be, and they hereby are approved, adopted and incorporated herein by reference as a part of this Order, and the Appellant's appeal is therefore **DISMISSED**.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

**SO ORDERED** this 17<sup>th</sup> day of December, 2014.

**KENTUCKY PERSONNEL BOARD**



**MARK A. SIPEK, SECRETARY**

A copy hereof this day sent to:

Hon. Stafford Easterling  
Brandy Randall  
Bobbie Underwood

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
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This matter came on for evidentiary hearing on October 3, 2014, at approximately 10:10 a.m. at 28 Fountain Place, Frankfort, Kentucky, before John C. Ryan, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by KRS Chapter 18A.

Appellant, Brandy Randall, was present and was not represented by legal counsel. The Agency, Justice and Public Safety Cabinet, Department of Corrections, was also present and represented by the Hon. Stafford Easterling.

This matter was the subject of one pre-hearing conference conducted on May 28, 2014, at which the issues were defined.

**BACKGROUND**

1. At all times germane to this proceeding, Brandy Randall held the position of Correctional Officer, assigned to the Luther Lockett Correctional Complex (LLCC) at LaGrange, Kentucky. By letter of February 13, 2014 over the signature of Gregory Howard, Warden, she was informed of management's intent to suspend her from duty and pay for a period of three days for lack of good behavior. This action was officially implemented by subsequent letter of February 24, 2014, from the Warden and made effective March 4, 2014. A true copy of the suspension letter is attached hereto as "**Recommended Order Attachment A.**"

2. By timely appeal of March 24, 2014, Ms. Randall took issue with the action under the appropriate category and presented her version or view of events. She wrote therein:

I am appealing the suspension dated February 24, 2014 due to the fact that it is based on non-factual, created or copied and conflicting information.

The write up on March 17, 2013 was given to (sic) by Lt. Blair who did not allow me to give my side of the incident. Nor was I question (sic) about what really happened. I specifically asked, Lt. Blair for a copy of the Occurrence Reports. He told me, "It did not matter." Yet the Occurrence Reports from that date were used to back up a suspension given to me on February 24, 2014. When I was suspended, I did not receive the Occurrence Reports for the events of October 10, 2013. I had to submit an Open Records Request to find the documentation.

The documentation itself is conflicting. One report was written on October 15, 2013, but the other report was not written until December 3<sup>rd</sup>, 2013. Officer Acree, who wrote the report in December, told me he was specifically asked by Captain Crutcher to write the report and Crutcher handed a copy of Officer Boone's report to use as a reference. This is not acceptable. It is simply false documentation to use someone else's report to generate a report. Also according to Policy 8.6 EOR, reports are due in 72 hours. While the EOR is not the report on me, it is recognizable that the Occurrence Report Standard time would be less than 72 hours to write a report, not 2 months. Therefore, the Occurrence Reports are non-factual and should not be used against me in any manner.

I feel that I should have received counseling, coaching and a performance improvement plan. Instead of helping me be a better employee by referring me to KEAP for assistance or helping me with my skills and abilities, I was suspended. I would like information on KEAP. I would like coaching. I want to be the best employee for the Department of Corrections that I can be now and in the future. I also am requesting the suspension be reversed and I receive my pay for the three days that I was off.

3. Upon convening the hearing and following opening by the Agency, it presented the sworn testimony of Appellant, **Brandy Randall**. She verified that she serves as a Correctional Officer at LLCC and briefly outlined her duties to consist of overall security of her unit within the facility. She ratified that she is familiar with the policy and rules applicable to the position, noting that she is required to act professionally at all times while on the job.

4. Called upon to review the contents of the intent to suspend letter issued to her on February 13, 2014, she confirmed that, as stated therein, she was previously counseled in March, 2013 relative to, “. . . unprofessional actions.” She denied that her behavior leading to the immediate suspension was similar to that for which the prior counseling occurred. She felt that she had improved somewhat in her behavior following the prior counseling, subsequently noting that she has likewise further improved since imposition of the suspension under appeal, impliedly to avoid further suspensions. Appellant essentially admitted the factual sequence recited in the intent to suspend letter, but denied that she was rude or disrespectful toward fellow officers or any inmate. She admitted some of the comments attributed to her but urged that her tone at the time was not rude or disparaging. She also admitted that she curses from time-to-time, but did not recall using the language attributed to her on this occasion. She denied that any of the comments or behavior attributed to her were with inmates present.

5. The Agency produced, and Appellant briefly reviewed, the Code of Ethics applicable to her position and the institutional policy blueprinting the general guidelines and information in place at LLCC. She acknowledged that she is familiar with the requirements and confirmed that she underwent in-service training concerning them. She agreed that the material requires that Correctional Officers behave professionally and that it addresses the matter of cursing while on duty. She insisted, however, that she did not view that her behavior upon the occasion under scrutiny rose to the level of violation of any of the provisions. She opined that at most she should have been issued a written reprimand.

6. Appellant continued that, rather than a suspension with loss of pay, further coaching and counseling would have been more appropriate for her to enable her to better understand the expectations of her in the performance of her duties. She reiterated that in her view certain of the recitations attributed to her did not violate policy even if accurate or, if the Agency views violations did occur, she was unaware that policy was breached. She acknowledged that she has not sought any coaching or counseling outside of that previously furnished, nor has she taken any positive steps on her own to obtain help in that regard, reiterating that if management views that she needs improvement it should expressly define that which is expected, whereupon she will comply.

7. **Adam Acree** is now a Correctional Officer at LLCC, where he has so served for approximately one year. He recalled that in October, 2013 he was “shadowing” a fellow officer, Christopher Boone, as on-the-job training. He was at the time, as a trainee, assigned no specific duties. On the date in question, October 14, 2013, Officer Boone took him to the unit supervised by Appellant and her greeting to them was, “Why are you all here?” and, in his perception, an annoyed tone. Some discussion ensued and Appellant referred the visitors to two inmates who were still “up” (presumably awake) and as part of the training their cells were visited and shaken down. The witness ratified the conversational exchange conducted with Appellant as recited in

the suspension letter, particularly recalling her cursing. Upon returning to the quarters assigned him, the witness and Boone discussed Appellant's comments, whereupon Boone agreed to prepare an Incident Report, advising the witness that he need not do so. However, in December 2013 management summonsed the witness, informed him of Boone's report, and requested that he prepare his own workup of events. He did as instructed and introduced his report, over Appellant's objection, as part of his testimony.

8. Under brief cross-examination, Appellant quizzed the witness as to the accuracy of his memory after a six week time lapse and pressed him as to whether he had reviewed the report prepared by Officer Boone before preparing his own so that they would match. The witness reacted that his memory of the sequence did not require refreshing, that he recalled the conversations and Appellant's tone very well, and that he did not review any other materials before preparing his own workup.

9. **Gregory Howard** holds twenty-four years experience in Corrections and has served as Warden at LLCC for five years. As Warden, it is his duty to assess and regulate the behavior of those under his supervision. It was he who ultimately recommended a three-day suspension of Appellant after reviewing all documents presented to him pertaining to the matter. These materials included a report by Christopher Boone, a Correctional Officer who has now left the Agency. He pointed out that her behavior outlined therein, if true, is not acceptable and is violative of standing policy. He explained that while dealing with inmates by officers, loud, rude, and obnoxious language, including cursing, signals disrespect. This in turn creates a major problem for the facility since inmates do not respond well to perceived or actual disrespect.

10. Addressing the treatment of Appellant, he explained that "numerous" grievances have been presented complaining of her behavior from staff and inmates. Despite several counseling and training-type sessions, she has not shown the requisite improvement expected of someone in her position. He recalled that during his own sessions with her she has acknowledged that she is "loud" and that she curses. She has also admitted in the sessions that she needs improvement; however, despite her admissions and the training she continues to engage in unprofessional behavior which risks potential, and sometimes actual, problems among inmates and coworkers. He urged that policy requires that staff, in their handling of inmates, be fair, firm, and consistent but Appellant has not entirely measured up in that regard. Further, on the occasion in question she was introduced to a trainee, Acree, and left a bad impression with him as to the level of professionalism within the facility. He recalled that she informed him early on that she is not interested in either getting along with or impressing fellow staff members but chooses simply to do her job and leave.

11. Directed to the specific penalization assessed, the Warden viewed that this was the next appropriate step under Agency progressive discipline policy. In view of the fact that the various sessions with Appellant, undertaking to educate and counsel her as to the expectations of the facility and compliance with policy, have not accomplished the purpose, perhaps loss of pay, which seems quite important to Appellant, might convince her of the seriousness of that required. He noted that she and one or more other staff have been referred for anger management training, urging that the purpose was to promote professionalism among staff. He insisted that he possesses absolutely no desire to hurt or even punish Appellant but, rather, seeks to help her understand that her behavior must improve.

12. Under brief cross-examination, Appellant quizzed the Warden as to the cursing aspects and whether or not it is common practice for Correctional Officers and staff to use strong language. He pointed out that cursing is never appropriate in the presence of inmates or, in most cases, while on duty at all due to the risk of having something being overheard and mistaken or misinterpreted. He reiterated that Appellant appears unable to filter her language or temper it to the circumstances despite repeated lectures about it. Further, he opined, Appellant appears unwilling to accept any accountability for the error of her ways and, until she does so, it seems unlikely that her behavior will change. He added that despite even her own admissions in her conversations with him that she needs improvement, she has not implemented most of the suggestions being made. The sworn testimony was thereupon concluded and the matter stood submitted for recommended order.

13. KRS 18A.095(1) requires that "A classified employee with status shall not be dismissed, demoted, suspended, or otherwise penalized except for cause."

14. 101 KAR 1:345 is the regulation governing imposition of disciplinary actions. Section 1 thereof allows that "Appointing authorities may discipline employees for lack of good behavior or the unsatisfactory performance of duties." Section 4 of the regulation permits suspension, limiting the level imposed to thirty days.

15. The Agency has in place, in addition to its Code of Ethics, an institutional policy specific to LLCC most recently made effective on August 15, 2013. The policy blueprints rather specifically the expected behavior of its personnel and details a menu of prohibited activities and conduct. The vast majority of these prohibited activities undertake to define what is considered appropriate, or not as the case may be, oral communications between and among staff and/or between staff and inmates. Cursing by staff in the presence of inmates, or directed toward inmates or fellow personnel is prohibited. Further, unduly loud discussions or arguments between staff in the presence of inmates is discouraged if not prohibited.

### **FINDINGS OF FACT**

1. At all times germane to this proceeding Appellant, Brandy Randall, was a classified employee with status, holding the position of Correctional Officer and assigned to the Luther Luckett Correctional Complex (LLCC). Her length of service in the position is unclear from the record, but she has been employed for a sufficient amount of time to be familiar with institutional policies and the Agency's Code of Ethics. She acknowledges familiarity therewith.

2. By all accounts, Appellant tends to be normally loud, and notably so from time-to-time in expressing herself while on duty. She admits to cursing upon occasion, apparently as somewhat of a routine matter and by habit, but insists that it is also common practice among the Correctional Officers. She acknowledges some portion of the comments and/or actions attributed to her, but challenges both the extent and nature of the cursing aspects on this particular occasion. She also challenges the process and documentation under which she was suspended.

3. The preponderance of proof indicates that, despite what management characterizes as repeated counseling, lectures, and conferences with the Warden and one or another supervisory official, Appellant has not reflected adequate improvement in her dealings with coworkers and to some extent inmates. This behavior has led to further efforts to align the expected behavior more in keeping with the requirements and expectations of management. In light of only limited results from the prior counseling and discussions, management has undertaken to deal with the most recent episode of perceived rudeness and inappropriate language in a more severe way, i.e. a three-day suspension. This penalization is depicted as the next level in the progressive discipline policy in place with the Agency and is intended to demonstrate to Appellant that improvement in her behavior and interaction is still a work in progress.

4. The Hearing Officer finds the testimony of the Appellant and of the witnesses to be credible.

### **CONCLUSIONS OF LAW**

1. 101 KAR 1:345 is the fundamental regulation under which agencies assess suspensions to employees perceived as errant in their ways. What constitutes lack of good behavior or unsatisfactory performance of duties is, in each instance, properly left to the agency for determination under its particular policy, code of ethics, or related framework of operation requisite to accomplishing its mission and goals. Some discretion must be afforded management in determining if behavior measures up, since ordinarily supervisors are in the best position to observe whether rules are being followed.

2. Although Appellant in this instance argues that her actions and/or reactions, specifically her language and attitude, did not rise to a level deserving suspension, she concedes that a written reprimand of her may have been appropriate. The Warden, however, points to a chronic and on-going series of complaints depicting this type of behavior on her part of which the episode under scrutiny is the latest. Appellant counters that additional counseling, coaching, and lectures, ostensibly to enable her to understand what is appropriate behavior or not, is needed, but the proof is that this treatment has apparently had little effect. Consequently, the more drastic penalization was assessed in an effort to convey to Appellant a need for further improvement. Resolution of the conflicting views between Appellant and management as to the level of her behavior, and the remedy needed to persuade her to meet policy requirements, should favor the Agency in this case. Its imposition of a three-day suspension, with loss of pay, under its progressive discipline policy was neither excessive nor erroneous in light of the overall circumstances.

### **RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **BRANDY RANDALL VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS** (Appeal No. 2014-056) be **DISMISSED**.

### **NOTICE OF EXCEPTION AND APPEAL RIGHTS**

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

Each party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

**ISSUED** at the direction of **Hearing Officer John C. Ryan** this 20<sup>th</sup> day of November, 2014.



**KENTUCKY PERSONNEL BOARD**

  
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**MARK A. SIPEK**  
**EXECUTIVE DIRECTOR**

A copy hereof mailed to:

Hon. Stafford Easterling  
Brandy Randall



DEPARTMENT OF CORRECTIONS

LaDonna Thompson  
Commissioner

Luther Lockett Correctional Complex  
P.O. Box 6  
LaGrange, Kentucky 40031  
Telephone: (502) 222-0363  
Fax: (502) 222-2043

Gregory Howard,  
Warden

February 24, 2014

Brandy Randall

Dear Officer Randall,

On February 17, 2014 you were issued a letter outlining my intention to suspend you for a period of three (3) days. Upon being issued this intent letter, you requested a meeting with me prior to my final decision being made. A meeting was held in my office on February 19, 2014 that included myself, you, and Personnel Administrator Institutional Sherri Cole. I have carefully considered the statements you made on your own behalf during this meeting. However, I find no reason to alter my decision to suspend you from duty and pay for a period of three (3) days.

Based on the authority of 101KAR 1:345, and in accordance with KRS 18A.095, you are hereby notified that you are suspended from duty and pay for a period of three (3) working days. Your dates of suspension are March 4, 2014 through March 6, 2014. You may return for your next regular shift on March 9, 2014, following your regular scheduled off days.

Based on a review of your performance and based on the authority of 101KAR 1:345, there is reason to believe this suspension is justified based on the following specific reason:

**Lack of Good Behavior** i.e., as reported by Officer Christopher Boone and Officer Adam Acree, and since being counseled on March 17, 2013 with regards to your unprofessional actions, you have failed to improve in this category. Specifically, on October 14, 2013 at approximately 5:30 AM while you were assigned to Unit 7 Baker, Officers Christopher Boone and Adam Acree walked into this unit looking for inmates that were awake to conduct cell searches. Upon their entering the Unit, you became rude and disrespectful to both Officers Boone and Acree and asked them why they were coming into your dorm. Officers Boone and Acree patrolled the Unit looking for an inmate that was awake to do a random cell search.

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Recommended Order Attachment A

**APPELLEE'S  
EXHIBIT**

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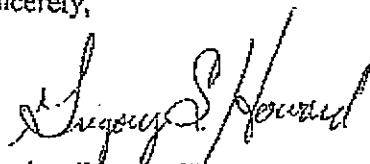
As they exited C-Wing, you met with them stating "cell 208 is awake". Officers Boone and Acree conducted the cell search of cell 208. Upon completion of the search, they exited the wing and saw you standing in the Unit Core. You asked, "Did Inmate Harris liked being searched?" Officer Boone replied, "No none of the inmates like it." You replied, "Good I hate that mother fucker." As Officer's Boone and Acree were leaving the unit, several inmates were entering the unit. As the inmates entered the unit some of them had hats on their heads. They overheard you say to the inmates wearing hats "why do you have your fucking hat on, take your fucking at off".

On November 27, 2013 you met with Captain Tim Crutcher and Captain Richard Garcia. In the meeting you admitted that you made a comment regarding inmate Harris, you don't remember making the statement in which you called him a mother fucker.

Your actions are in violation of LLCC 03-01-01 page 7 Section T (Prohibited Employee Activities and Conduct) Sub Section L.) An employee shall not engage in behavior prohibited by the Department of Corrections Code of Ethics outlined in CFP 3.1 In addition, an employee shall not conduct an argument or loud discussion with another staff member in front of staff or an inmate. An employee shall privately and professionally resolve or discuss controversy.

A copy of this notice shall be provided to the Personnel Cabinet in accordance with Personnel rules. As provided by KRS 18A.095, you may appeal this action to the Personnel Board within sixty (60) days after receipt of this notice, excluding the date notification is received. An appeal must be filed in writing using the attached appeal form and in the manner prescribed on the form.

Sincerely,



Warden Gregory Howard

Attachment: Appeal Form

cc: Tim Longmeyer, Secretary, Personnel Cabinet  
LaDonna Thompson, Commissioner - Department of Corrections  
Stephanie Appel, Director, Personnel Services  
Personnel File